IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1712 OF 2007

Tribhuvan U. Tiwari ....Petitioner
V/s.
Rambabu R.D. Prajapati & Ors. ....Respondents

Mr.Anil R. Mishra for the Petitioner.

Mr.R.C. Mishra for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 16TH AUGUST, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. By an order dated 25.7.2007, notice was issued to the Respondents and made returnable on 8.8.2007. The notice was directed to state that the matter may be disposed of finally at the admission stage. Despite being served, Respondent No.2 remained absent on 8.8.2007. However, the matter was adjourned to 16.8.2007. Respondent No.2 is absent even today.

3. The Petitioner and Respondent No.1 had entered into a leave and licence agreement dated 15.10.2004. The Petitioner is the licensor and Respondent No.1 is the licensee. The duration of the

licence was for a period of eleven months and came to an end on 14.9.2005.

4. During the subsistence of the licence, Respondent No.1 allegedly illegally created a sub-licence in favour of Respondent No.2. Respondent No.1 however, contends that Respondent No.2 forcibly dispossessed him. Be that as it may, admittedly Respondent No.1 is not in possession today. Respondent No.2 is in possession. In view of the alleged illegal sub-letting, Respondent No.1 terminated the licence by a letter dated 6.9.2005.

. It is however important to note that in any event the duration of the licence is no longer subsisting having expired on 14.9.2005. Neither Respondent No.1 nor Respondent No.2 has any semblance of a right to continue to remain in possession or occupation of the said premises.

5. In these circumstances, the Petitioner filed L.E. Suit No.50/68 of 2005 in November, 2005 inter-alia for possession and compensation at Rs.6000/- per month.

. The Petitioner also took out an application

for interim reliefs being Exhibit-6. The Petitioner inter-alia sought an order restraining the Respondents from parting with possession of, alienating or encumbering the said premises, for compensation at Rs.6000/- per month and for an order appointing the Court Receiver.

6. The trial Court granted the application for injunction but rejected other reliefs. The Petitioner's application for revision was rejected, as not maintainable.

7. It is in these circumstances that the present Writ Petition was filed challenging both the orders.

8. There is no warrant for denying the application for appointment of the Court Receiver. The learned trial Court held that the Petitioner had not justified the claim for interim compensation at Rs.6000/- per month. I will presume that to be correct. In that event, the only course open was to have the interim compensation determined by appointment of a Court Receiver and by directing the Court Receiver to invite bids from third parties for being appointed as his agent. As stated above, the Respondents have absolutely no right to remain in

occupation or use of the said premises.

9. In the circumstances, Rule is made absolute as follows :-

i). In addition to the order granting an injunction, the Court Receiver shall be appointed as the Receiver in respect of the suit premises with all powers under Order XL of the Code of Civil Procedure. The Court Receiver shall invite bids from third parties for being appointed as an agent of the Court Receiver in respect of the suit premises. The parties to the suit shall also be at liberty to bid for the agency of the Court Receiver. However, in the event of the Plaintiff/Petitioner being appointed as the agent of the Court Receiver, the Petitioner shall not be required to furnish security. Further in the event of the Court Receiver not receiving any bids either from the Respondents or third parties, the Petitioner shall be put in possession of the suit premises without security or royalty.

ii). Respondent No.2 shall within eight

weeks from today pay the costs of this Writ Petition to the Petitioner fixed at Rs.5000/-.

iii). The costs of the advertisements shall initially be paid by the Petitioner. However upon an agent being appointed the Petitioner shall be reimbursed the costs of the advertisements from the royalty forthwith. In the event of the Petitioner being appointed as the agent he shall be entitled to credit for such costs against the royalty payable by him.